

TO: Mail Stop 8  
 Director of the U.S. Patent & Trademark Office  
 P.O. Box 1450  
 Alexandria, VA 22313-1450

**REPORT ON THE  
 FILING OR DETERMINATION OF AN  
 ACTION REGARDING A PATENT OR  
 TRADEMARK**

In Compliance with 35 § 290 and/or 15 U.S.C. § 1116 you are hereby advised that a court action has been filed in the U.S. District Court Northern District of California on the following  Patents or  Trademarks:

DOCKET NO. <b>CV 09-00788 EMC</b>	DATE FILED 2/23/09	U.S. DISTRICT COURT 450 Golden Gate Avenue; P.O. Box 36060; San Francisco, CA 94102
PLAINTIFF <b>ALIPHCOM INC</b>	DEFENDANT <b>PLANTRONICS INC</b>	
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
1 see Complaint		
2 <b>5,712,453</b>		
3		
4		
5		

In the above—entitled case, the following patent(s) have been included:

DATE INCLUDED	INCLUDED BY	<input type="checkbox"/> Amendment <input type="checkbox"/> Answer <input type="checkbox"/> Cross Bill <input type="checkbox"/> Other Pleading
PATENT OR TRADEMARK NO.	DATE OF PATENT OR TRADEMARK	HOLDER OF PATENT OR TRADEMARK
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In the above—entitled case, the following decision has been rendered or judgement issued:

DECISION/JUDGEMENT
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CLERK Richard W. Wiking	(BY) DEPUTY CLERK Sheila Rash	DATE February 23, 2009
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Copy 1—Upon initiation of action, mail this copy to Commissioner    Copy 3—Upon termination of action, mail this copy to Commissioner  
 Copy 2—Upon filing document adding patent(s), mail this copy to Commissioner    Copy 4—Case file copy

COPY

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E-filing

EMC

14 UNITED STATES DISTRICT COURT  
15 NORTHERN DISTRICT OF CALIFORNIA

17 ALIPHCOM, INC.,

18 Plaintiff,

19 v.

20 PLANTRONICS, INC.,

21 Defendant.

CV 09

0788

COMPLAINT FOR DECLARATORY  
RELIEF

DEMAND FOR JURY TRIAL

24 Plaintiff AliphCom, Inc. ("Aliph") alleges as follows:

25 PARTIES

26 1. Plaintiff AliphCom, Inc. is a California corporation with its principal place of  
27 business at 99 Rhode Island Street, Third Floor, San Francisco, California 94103.  
28

COMPLAINT

pa-1320573

09 FEB 23 PM 2:48  
RICHARD W. HOLLOWAY  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

1           2. On information and belief, defendant Plantronics, Inc. ("Plantronics") is a  
2 Delaware corporation with its principal place of business at 345 Encinal Street, Santa Cruz,  
3 California 95060.

4           3. Plantronics is listed as an assignee on the face of United States Patent No.  
5 5,712,453 (the “‘453 Patent” or the “patent in suit”). The ‘453 Patent lists its issuance date as  
6 January 27, 1998, and its title as “Concha Headset Stabilizer.” A true and correct copy of the  
7 patent in suit is attached hereto as Exhibit A.

## **JURISDICTION**

9           4. This is an action under the Federal Declaratory Judgments Act, 28 U.S.C. §§ 2201  
10 and 2202, for a declaration pursuant to the patent laws of the United States, 35 U.S.C. § 1 et. seq.,  
11 that the patent in suit is not infringed by Aliph or is invalid or both.

12       5. This Court has subject matter jurisdiction under 28 U.S.C. §§ 1331 (federal  
13 question) and 1338(a) (action arising under an Act of Congress relating to patents).

14       6. On information and belief, this Court has specific and general personal jurisdiction  
15 over Plantronics. In particular, on information and belief, Plantronics' principal place of business  
16 is in this Judicial District, and it conducts or solicits substantial business within this district and  
17 elsewhere in California.

## **VENUE**

19       7.     Venue is proper in this judicial district under 28 U.S.C. § 1331(b)-(c). On  
20 information and belief, Plantronics resides within this Judicial District for venue purposes.

## **INTRADISTRICT ASSIGNMENT**

22           8. Pursuant to Local Rule 3-2(c), the Intradistrict Assignment rules are inapplicable  
23 to this Complaint.

## PENDENCY OF OTHER ACTION

25           9. An action titled *Plantronics, Inc. v. Aliph, Inc. and AliphCom, Inc.*, No. 06:09-cv-  
26 00024-LED (“Texas Action”), is pending in the United States District Court for the Eastern  
27 District of Texas, Tyler Division, involving the same named parties and the same patent in suit.

## **GENERAL ALLEGATIONS**

2 10. On January 15, 2009, Plantronics filed the Texas Action against Aliph.  
3 Plantronics accused Aliph's Jawbone New Fit Earbuds (the "Earbuds") of infringing one or more  
4 claims of the '453 Patent.

5 11. Aliph denies that it infringes any valid claim of the patent in suit.

6       12. On February 13, 2009, for the convenience of parties and witnesses, in the interest  
7 of justice, Aliph moved the court in the Texas Action for an order transferring that case to this  
8 Judicial District pursuant to 28 U.S.C. § 1404(a). On information and belief, Plantronics opposes  
9 transfer to this Judicial District.

10       13. On information and belief, after inspection of the file history of the patent in suit  
11 and the assignment records of the United States Patent and Trademark Office (“USPTO”), it  
12 appears that Plantronics may not be the sole owner of the patent in suit and, therefore, may lack  
13 standing to maintain a lawsuit alleging infringement of the patent in suit.

14        14. An actual and justiciable controversy exists between Plantronics and Aliph  
15 concerning whether Aliph infringes any valid claim of the patent in suit and whether Plantronics  
16 is the owner of all right, title, and interest in and to the '453 Patent. Aliph now seeks a  
17 declaratory judgment from this Court that the patent in suit is not infringed by Aliph or is invalid  
18 or both. Aliph also seeks a declaratory judgment from this Court as to whether Plantronics is the  
19 owner of all right, title, and interest in and to the '453 Patent.

## **FIRST CLAIM FOR RELIEF**

**(Declaratory Judgment Regarding Infringement of the '453 Patent)**

22 15. Aliph incorporates by reference paragraphs 1 to 14 above.

16. Aliph does not and has not infringed, directly or indirectly, literally or by  
equivalents, any valid and enforceable claim of the '453 Patent.

## **SECOND CLAIM FOR RELIEF**

**(Declaratory Judgment Regarding Invalidity of the '453 Patent)**

27 17. Aliph incorporates by reference paragraphs 1 to 16 above.

1           18. The claims of the '453 Patent are invalid because, inter alia, the '453 Patent was  
2 not obtained in a manner consistent with and required by the provisions of Title 35 of the United  
3 States Code, and in particular because it fails to comply with at least the required conditions for  
4 patentability under 35 U.S.C. §§ 102, 103 and/or 112.

### **THIRD CLAIM FOR RELIEF**

**(Declaratory Judgment Regarding Ownership of the '453 Patent)**

7 19. Aliph incorporates by reference paragraphs 1 to 18 above.

8           20. On information and belief, Plantronics is not the owner of all right, title, and  
9 interest in and to the '453 Patent and, accordingly, Plantronics lacks standing to bring a lawsuit  
10 alleging infringement of the patent in suit.

## **PRAYER FOR RELIEF**

WHEREFORE, Aliph prays for relief as follows:

13       1. That the Court declare that Aliph does not and has not infringed, directly or  
14 indirectly, literally or by equivalents, any valid and enforceable claim of the '453 Patent.

15 2. That the Court declare that the claims of the '453 Patent are invalid;

16           3. That the Court declare that Plantronics is not the owner of all right, title, and  
17 interest in and to the '453 Patent.

18 4. That the Court declare that this is an exceptional case under 35 U.S.C. § 285;

19       5. That the Court award Aliph its costs and fees in this action, including attorneys'  
20 fees, and pre-judgment interest thereon; and

21           6. That the Court grant Aliph such other and further relief as the Court deems just  
22 and proper.

**JURY DEMAND**

Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Aliph hereby demands a trial by jury of all issues so triable in this action.

1 Dated: February 23, 2009  
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